

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

GALT CAPITAL, LLP, and BRUCE
RANDOLPH TIZES,

Plaintiffs,

v.

EDWARD A. SEYKOTA,

Defendant.

Civil No. 2002-63

EDWARD A. SEYKOTA,

Counterclaimant and
Third-party Plaintiff,

v.

GALT CAPITAL, LLP, and BRUCE
RANDOLPH TIZES,

Counterclaim Defendants,

and SYDNEY STERN,

Third-party Defendant.

SYDNEY C. STERN,

Plaintiff,

v.

EDWARD A. SEYKOTA,

Defendant.

Civil No. 2002-134

Attorneys:

A. Jeffery Weiss, Esq.

St. Thomas, U.S.V.I.
For the Plaintiff,

Kevin F. D'Amour, Esq.
St. Thomas, U.S.V.I.
For the Defendant.

MEMORANDUM OPINION AND ORDER

GÓMEZ, C.J.

Before the Court are the applications of Sydney Stern ("Stern") and Edward Seykota ("Seykota") for an award of attorneys fees and costs.

FACTS

The above-captioned matter arose out of two separate cases, *Galt Capital, LLP v. Seykota*, Civ. No. 2002-63, and *Stern v. Seykota*, Civ. No. 2002-134, whose litigation spanned approximately five years. These cases were consolidated for all purposes before trial. The sole remaining litigants in this matter at the time of trial were Stern and Seykota.

Seykota moved the Court for summary judgment on all of Stern's claims. That motion was initially granted, but later vacated by this Court. Seykota moved to have the Court reconsider its order vacating summary judgment. That motion was denied. Thereafter, the Court granted summary judgment in favor of Seykota on seven of Stern's claims. This matter came on for trial on July 23, 2007. On July 27, 2007, the jury returned a verdict in favor of Stern on her breach of contract claim and awarded her \$2,500,000 in compensatory damages.

Both parties now petition the Court for an award of attorneys fees and costs. In her petition, Stern seeks an award in the amount of \$451,179.60 in attorneys fees and costs. Seykota seeks \$342,253.55 in attorneys fees and costs.

DISCUSSION

Title 5, section 541 of the Virgin Islands Code¹ provides:

Costs which may be allowed in a civil action include:

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence in the trial; and
- (6) Attorney's fees as provided in subsection (b) of this section.

V.I. CODE ANN. tit. 5, § 541(a) (1986). The statute further provides: "there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way

¹ Seykota argues that Nevada law applies to the award of attorneys fees and costs in this case under a conflicts analysis. However, this argument is without merit. In diversity cases, an award of attorney's fees is a matter of substantive state law. See *Mitzel v. Westinghouse Elec. Corp.*, 72 F.3d 414, (3d Cir. 1995)(noting that "[g]enerally, the right of a party or an attorney to recover attorney's fees from another party in a diversity action is a matter of substantive state law."). In the Virgin Islands, an reasonable attorneys fees are taxable as costs. See 5 V.I.C. § 541. For choice of law purposes, an award of costs is considered procedural, and as such a court would apply its own rules. See Restatement (Second) of Conflicts § 122, cmt. a. (noting that a court applies its own rules to matters of judicial administration such as costs). As such, Virgin Islands law applies to an award of attorneys fees in this case.

of indemnity for his attorney's fees in maintaining the action or defenses thereto" *Id.* at (b).

To determine a fair and reasonable award of attorneys' fees, the Court considers factors including the time and labor involved, skill required, customary charges for similar services, benefits obtained from the service and the certainty of compensation. *Lempert v. Singer*, 1993 WL 661181, No. 1990-CV-200 at *2 (D.V.I., December 30, 1993; see also *Morcher v. Nash*, 32 F. Supp. 2d 239, 241 (D.V.I. 1998). Reasonable attorneys' fees may include charges for work that was "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 561 (1986); see also *Gulfstream III Associates, Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 420 (3d Cir. 1993) (noting that reasonable attorneys' fees may include charges for measures necessary to enforce district court judgments as well as other charges "reasonably expended" to advance the litigation).

The decision whether to award fees to a prevailing party and to what extent is within the court's discretion. *Jo-Ann's Launder Ctr. v. Chase Manhattan Bank*, 31 V.I. 226, 234 (1995).

ANALYSIS

A. Stern's petition for attorneys fees

Applying the standard outlined above, the Court finds that most of the \$451,179.60 in attorneys' fees and costs claimed by

Stern was reasonably expended. However, the Court also finds that several items were not reasonable.

For instance, Stern requests reimbursement for conferences between her own attorneys and paralegals. Such expenses are duplicative, and not to be included in assessments of reasonable fees. *See Morcher*, 32 F. Supp. 2d 239, 241-42 (D.V.I. 1998) ("Multiple lawyer conferences, not involving opposing counsel... involve duplicative work."); *see also Abramovitz v. Lynch*, Civ. No. 2005-92, 2007 WL 1959164, at *1 (D.V.I. June 26, 2007)(finding conferences between attorneys and their paralegal assistant unreasonable).

Stern's request for reimbursement for general itemizations where several different types of legal work are grouped together similarly is problematic. Such entries "are so vague as to prevent meaningful judicial review." *Morcher*, 32 F. Supp. 2d at 242-243. Moreover, "these undifferentiated entries hinder the Court in determining whether the time spent on each of the listed activities was reasonable[.]" *Id.* at 243. Those entries are unreasonable. Indeed, Stern submitted a billing invoice which summarized different types of legal work that spanned approximately two months and totaled 129 hours. This summary prevents meaningful judicial review by the Court, and as such, is unreasonable.

Stern also requests reimbursement for basic secretarial tasks like filing case documents and photocopying. However,

"[g]eneral photocopy, facsimile, and telephone charges are not compensable under section 541." *Id.* at 243.² Similarly, messenger service fees are not compensable under section 541. *See, e.g., Good Timez, Inc. v. Phoenix Fire and Marine Ins. Co., Ltd.*, 754 F. Supp. 459, 464 (D.V.I. 1991)(refusing to award reimbursement for messenger service). Stern's request for reimbursement for such tasks is unreasonable.

Additionally, Stern requests reimbursement for the entire amount of expert fees incurred, and for the travel expenses of her lay witnesses. This request includes reimbursement for experts that did not testify at trial. Section 541 limits the reimbursement for expert fees to the minimal amount allowed under 28 U.S.C. § 1821. *Equivest St. Thomas, Inc. v. Gov't of the Virgin Islands*, Civ. No. 2001-155, 2004 WL 3037953, at *10 (D.V.I. Dec. 31, 2004)(citing *Dr. Bernard Heller Foundation v. Lee*, 847 F.2d 83, 86-88 (3d Cir. 1988)). Section 1821 permits a witness to be paid \$40 per day for each day of attendance at trial. 28 U.S.C. § 1821(b). Accordingly, the Court will award Stern \$80 for travel and attendance expenses of her two experts who testified at trial. The Court will also award Stern an

² Stern indicated in her petition that she was also seeking fees pursuant to 28 U.S.C. § 1920. Section 1920 allows the taxing of costs for fees and disbursements of printing. 28 U.S.C. § 1920(3). Nevertheless, the Third Circuit has previously held that section 1920 does not apply to the District Court of the Virgin Islands. *See Dr. Bernard Heller Foundation v. Lee*, 847 F.2d 83, 86-88 (3d Cir. 1988).

additional \$120 for travel and attendance expenses of her two lay witnesses who testified at trial.

Finally, Stern requests reimbursement for fees and costs incurred in litigating unsuccessful claims. The limited success of a prevailing party is taken into account in determining the amount of a reasonable fee. *See Trailer Marine Transp. Corp. v. Charley's Trucking*, 20 V.I. 286, 289 (1984)(noting that "where the prevailing party achieved only limited success, the court should award only that amount of fees that is reasonable in relation to the results obtained."). Where the prevailing party has failed on a claim that is distinct from his successful claims, the hours spent on the unsuccessful claims should be excluded. *Id.*

Here, Stern alleged eleven³ claims against Seykota, but ultimately prevailed on a single claim. While some of the claims were related, others, such as the claims associated with the condominiums, were distinct from the contract claim on which she prevailed.

The Court finds that \$151,973.88 of the fees and costs requested is unreasonable and must be deducted from Stern's requested reimbursement. Stern's award of \$299,205.72 will be further reduced by 20% to account for time spent on unsuccessful

³ Fourteen claims were actually alleged against Seykota. However, three of the counts in Stern's counterclaim in Civ. No. 2002-63 were re-alleged in her Complaint in Civ. No. 2002-134.

claims. Witness fees in the amount of \$200 will be added to that amount for a total award of \$239,564.58.

B. Seykota's petition for attorneys fees and costs

Seykota argues that he is entitled to an award of attorneys fees because Stern ultimately prevailed on only one of the fourteen counts she alleged against Seykota. Section 541 permits the court to award to the prevailing party in a case a fair and reasonable amount in attorneys fees and costs. 5 V.I.C. § 541(a). The prevailing party is "the party who has an affirmative judgment rendered in his favor at the conclusion of the entire case." *Ingvoldstad v. King's Wharf Island Enters.*, 20 V.I. 314 (1983). Seykota is not the prevailing party. Accordingly, his application for attorneys fees must be denied.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that Seykota shall reimburse Stern for attorneys fees and costs in the amount of \$239,564.58; and it is further

ORDERED that Seykota's petition for attorneys fees and costs is **DENIED**.

Dated: December 20, 2007

S_____
Curtis V. Gómez
Chief Judge